

Fair Political Practices Commission

To: Chairman Johnson; Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Lawrence T. Woodlock, Senior Commission Counsel
Scott Hallabrin, General Counsel

Subject: Repeal of Regulation 18530.9

Date: July 27, 2007

Proposed Commission Action. Repeal Regulation 18530.9. The lawsuit challenging Regulation 18530.9 was settled after the Commission concluded that the trial and appellate courts were unlikely to reverse their positions on the law. The stipulated judgment entered by the court permanently enjoins enforcement of the regulation. Its continued presence “on the books” as a Commission regulation is likely to cause confusion among the public without serving any useful purpose.

Background. On February 8, 2005, Citizens to Save California and Assembly Member Keith Richman filed a complaint for injunctive and declaratory relief in Sacramento Superior Court challenging the Commission’s adoption of regulation 18530.9 in June 2004, which imposed on candidate-controlled ballot measure committees the contribution limits applied to the controlling candidates. Plaintiffs claimed that the regulation violated the First Amendment, and that the Commission lacked statutory authority to adopt the regulation.

Another group of plaintiffs led by Governor Schwarzenegger intervened in the action. The court granted plaintiffs’ motion for preliminary injunction, barring FPPC enforcement of regulation 18530.9 pending final disposition of the lawsuit. The Commission appealed, and the Third District Court of Appeal heard oral argument on November 17, 2006. On December 8, the Court of Appeal issued an opinion affirming the trial court’s grant of a preliminary injunction against the Commission. (*Citizens to Save California vs. California Fair Political Practices Commission* (2006) 145 Cal.App.4th 736.) The Commission chose not to seek review by the California Supreme Court, and the case was settled without further litigation in the trial court. The Stipulated judgment, attached hereto, was entered by the trial court on May 18, 2007.

Attachments:

Stipulated Judgment in favor of plaintiffs
Regulation 18530.9